

House Study Bill 88

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC SAFETY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the state fire marshal's office of the
2 department of public safety concerning the publication of
3 administrative rule notices and explosives licensing and
4 making criminal penalties applicable.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSP 1040DP 80
7 ec/sh/8

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1 1 Section 1. Section 101A.1, Code 2003, is amended by adding
1 2 the following new subsection before subsection 1:
1 3 OA. "Blaster license" means a license issued by the state
1 4 fire marshal pursuant to this chapter for the use of
1 5 explosives.
1 6 Sec. 2. Section 101A.1, subsection 2, Code 2003, is
1 7 amended to read as follows:
1 8 2. "Commercial explosives license" ~~or "license"~~ means a
1 9 license issued by the state fire marshal pursuant to this
1 10 chapter for the manufacture, importation, distribution, sale,
1 11 storage, and commercial use of explosives.
1 12 Sec. 3. Section 101A.1, Code 2003, is amended by adding
1 13 the following new subsection:
1 14 NEW SUBSECTION. 2A. "Bomb" means an explosive device
1 15 detonated by impact, proximity to an object, a timing
1 16 mechanism, or other predetermined means, or any of various
1 17 devices the primary or common purpose of which is to explode
1 18 and to be used as a weapon against any person or property,
1 19 including any combination of parts either designed or intended
1 20 for use in converting any device into a bomb.
1 21 Sec. 4. Section 101A.1, subsection 3, Code 2003, is
1 22 amended to read as follows:
1 23 3. "Explosive" or "explosives" means any chemical
1 24 compound, mixture or device, the primary or common purpose of
1 25 which is to function by explosion, ~~i.e. that is,~~ with
1 26 substantially instantaneous release of gas and heat, unless
1 27 such compound, mixture, or device is otherwise specifically
1 28 classified by the United States department of transportation.
1 29 The term "explosives" includes a bomb and all material which
1 30 is classified as class A, class B, and class C 1.1 through 1.6
1 31 explosives by the United States department of transportation,
1 32 and includes, but is not limited to, dynamite, black powder,
1 33 pellet powders, initiating explosives, blasting caps, electric
1 34 blasting caps, safety fuse, fuse lighters, fuse igniters,
1 35 squibs, cordeau detonative fuse, instantaneous fuse, igniter
2 1 cord, igniters, smokeless propellant, cartridges for
2 2 propellant-actuated power devices and cartridges for
2 3 industrial guns, but shall not include "fireworks" as defined
2 4 in section 727.2 nor ammunition or small arms primers
2 5 manufactured for use in shotguns, rifles, and pistols.
2 6 Commercial explosives are those explosives which are intended
2 7 to be used in commercial or industrial operations.
2 8 Sec. 5. Section 101A.1, subsection 6, Code 2003, is
2 9 amended to read as follows:
2 10 6. "Licensee" means a person holding a commercial
2 11 explosives license or blaster license issued by the state fire
2 12 marshal pursuant to this chapter.
2 13 Sec. 6. Section 101A.1, subsections 8 and 10, Code 2003,
2 14 are amended by striking the subsections.
2 15 Sec. 7. Section 101A.2, Code 2003, is amended by striking
2 16 the section and inserting in lieu thereof the following:
2 17 101A.2 COMMERCIAL EXPLOSIVES LICENSE == BLASTER LICENSE ==
2 18 VIOLATIONS == PENALTIES.
2 19 1. The state fire marshal shall issue a commercial
2 20 explosives license or a blaster license to a person if the
2 21 state fire marshal determines that the person applying for the

2 22 license meets all of the following criteria:
2 23 a. The person, in the state fire marshal's discretion, is
2 24 of good character and sound judgment.
2 25 b. The person has sufficient knowledge of the use,
2 26 handling, and storage of explosive materials to protect the
2 27 public safety.
2 28 c. The person is twenty-one years of age or older.
2 29 d. The person has never been convicted of a felony.
2 30 e. The person is not addicted to the use of alcohol or any
2 31 controlled substance.
2 32 f. The person has no history of repeated acts of violence.
2 33 g. The state fire marshal reasonably determines that the
2 34 applicant does not constitute a danger to any person.
2 35 h. The person has never been convicted of any crime
3 1 defined in chapter 708.
3 2 i. The person has not made any material misstatement or
3 3 knowingly withheld information in connection with any original
3 4 or renewal application for a license.
3 5 2. A person applying for a license pursuant to this
3 6 section shall be required to submit fingerprints that may be
3 7 submitted to the federal bureau of investigation through the
3 8 state criminal history repository for purposes of a national
3 9 criminal history record check. An applicant for a license
3 10 shall deposit with the state fire marshal, in addition to any
3 11 other fees, the fee associated with the processing of
3 12 fingerprints. The fee associated with fingerprint processing
3 13 shall be returned if the fingerprints are not submitted to the
3 14 federal bureau of investigation for the purpose of licensing.
3 15 3. Licenses issued pursuant to this section shall be
3 16 issued for a period of one year, but may be issued for shorter
3 17 periods, and may be revoked or suspended by the state fire
3 18 marshal for any of the following reasons:
3 19 a. Falsification of information submitted in the
3 20 application for a license.
3 21 b. Proof that the licensee has violated any provisions of
3 22 this chapter or any rules prescribed by the state fire marshal
3 23 pursuant to this chapter.
3 24 4. Licenses issued pursuant to this section shall be
3 25 issued by the state fire marshal upon payment of a fee in an
3 26 amount not to exceed the cost of administering this section.
3 27 Each license shall be valid for a period of one calendar year,
3 28 commencing on January 1 and terminating on December 31;
3 29 however, an initial license may be issued during any calendar
3 30 year for the number of months remaining in such calendar year,
3 31 computed to the first day of the month when the application
3 32 for the license is approved. The license fee shall be charged
3 33 on a pro rata basis for the number of months remaining in the
3 34 year of issue. Applications for renewal of licenses shall be
3 35 submitted within thirty days prior to the license expiration
4 1 date and shall be accompanied by payment of the prescribed
4 2 annual fee.
4 3 5. Except as permitted in sections 101A.9 through 101A.11,
4 4 it is unlawful for any person to willfully manufacture,
4 5 import, store, detonate, sell, or otherwise transfer or
4 6 provide any explosive materials unless such person is the
4 7 holder of a valid license issued pursuant to this section. A
4 8 violation of this subsection is a class "C" felony.
4 9 6. It is unlawful for a person to willfully purchase,
4 10 possess, transport, store, or detonate explosive materials
4 11 unless such person is the holder of a valid license issued
4 12 pursuant to this chapter. A violation of this subsection is a
4 13 class "C" felony.
4 14 7. Commercial dealers having a federal firearms license
4 15 shall be exempt from the commercial explosives license
4 16 requirement of this chapter for importation, distribution,
4 17 sale, transportation, storage, and possession of smokeless
4 18 powder propellants or black sporting powder propellants
4 19 provided that such dealer conforms to and complies with rules
4 20 or ordinances of federal, state, or city authorities having
4 21 jurisdiction of such powder.
4 22 8. An applicant for employment with a commercial
4 23 explosives licensee other than a blaster shall possess the
4 24 same qualifications required by subsection 1, paragraphs "b",
4 25 "d", "e", "f", "g", "h", and "i".
4 26 Sec. 8. Section 101A.4, subsection 2, Code 2003, is
4 27 amended by striking the subsection.
4 28 Sec. 9. Section 101A.5, Code 2003, is amended to read as
4 29 follows:
4 30 101A.5 RULES.
4 31 The state fire marshal shall prepare, and adopt, and
~~4 32 distribute to permit-issuing authorities and other interested~~

~~4 33 persons, without cost, rules in accordance with provisions of~~
4 34 chapter 17A, pertaining to the manufacture, transportation,
4 35 storage, possession, and use of explosive materials. Rules
5 1 adopted by the state fire marshal shall be compatible with,
5 2 but not limited to the national fire protection association's
5 3 ~~pamphlet standard~~ number 495 and federal rules pertaining to
5 4 commerce, possession, storage, and use of explosive materials.
5 5 Such rules shall:

5 6 1. Prescribe reasonable standards for the safe
5 7 transportation and handling of explosive materials so as to
5 8 prevent accidental fires and explosions and prevent theft and
5 9 unlawful or unauthorized possession of explosive materials.

5 10 2. Prescribe procedures and methods of inventory so as to
5 11 assure accurate records of all explosive materials
5 12 manufactured or imported into the state and records of the
5 13 disposition of such explosive materials, including records of
5 14 the identity of persons to whom sales and transfers are made,
5 15 and the time and place of any loss or destruction of explosive
5 16 materials which might occur.

5 17 3. Prescribe reasonable standards for the safe storage of
5 18 explosive materials as may be necessary to prevent accidental
5 19 fires and explosions and prevent thefts and unlawful or
5 20 unauthorized possession of explosive materials.

5 21 4. Require such reports from licensees, ~~permittees,~~
5 22 sheriffs, and chiefs of police as may be necessary for the
5 23 state fire marshal to discharge the fire marshal's duties
5 24 pursuant to this chapter.

5 25 5. Prescribe the form and content of license ~~and permit~~
5 26 applications.

5 27 6. Conduct such inspections of licensees ~~and permittees~~ as
5 28 may be necessary to enforce the provisions of this chapter.

5 29 ~~7. Establish fees for the issuance of licenses and~~
5 30 ~~inspection of commercial explosive sites.~~

5 31 ~~8. Prescribe the educational and experience requirements~~
5 32 ~~necessary for issuance of a license pursuant to this chapter.~~

5 33 Sec. 10. Section 101A.6, Code 2003, is amended to read as
5 34 follows:

5 35 101A.6 NOTICE OF STORAGE REQUIRED.

6 1 A commercial explosives licensee shall notify the sheriff
6 2 of the county ~~and~~ the local police authority of any city, ~~in~~
~~6 3 which and the fire chief having jurisdiction of~~ explosive
6 4 materials that will be stored, and shall also notify such
6 5 authorities when the storage is terminated. Any person who
6 6 violates this section commits a simple misdemeanor.

6 7 Sec. 11. NEW SECTION. 101A.6A NOTICE OF DETONATION
6 8 REQUIRED.

6 9 If a detonation of explosives or explosive materials is to
6 10 occur outside of a commercial explosive site, the person
6 11 responsible for the detonation shall notify the sheriff or
6 12 police chief and the fire chief having jurisdiction of the
6 13 place and time at which the detonation will occur. The person
6 14 responsible for the detonation shall comply with any
6 15 applicable ordinances which may be in effect. Any person who
6 16 violates this section commits a simple misdemeanor.

6 17 Sec. 12. Section 101A.7, Code 2003, is amended to read as
6 18 follows:

6 19 101A.7 INSPECTION OF STORAGE FACILITY.

6 20 1. The commercial explosives licensee's ~~or permittee's~~
6 21 explosive storage facility shall be inspected at least once a
6 22 year by a representative of the state fire marshal's office,
6 23 except that the state fire marshal may, at those mining
6 24 operations licensed and regulated by the United States
6 25 department of labor, accept an approved inspection report
6 26 issued by the United States department of labor, mine safety
6 27 and health administration, for the twelve-month period
6 28 following the issuance of the report. The state fire marshal
6 29 shall assess a fee in an amount necessary to recover the cost

6 30 of conducting the inspection pursuant to this section. The
6 31 state fire marshal shall notify the appropriate city or county
6 32 governing board of commercial explosives licenses to be issued
6 33 in their respective jurisdictions pursuant to this chapter.

6 34 The notification shall contain the name of the applicant to be
6 35 licensed, the location of the facilities to be used in storing
7 1 explosives, the types and quantities of explosive materials to
7 2 be stored, and other information deemed necessary by either
7 3 the governing boards or the state fire marshal. The facility
7 4 may be examined at other times by the sheriff of the county
7 5 where the facility is located or by the local police authority
7 6 if the facility is located within a city of over ten thousand
7 7 population and if the sheriff or city council considers it
7 8 necessary.

7 9 2. If the state fire marshal finds the facility to be
7 10 improperly secured, the commercial explosives licensee or
7 11 ~~permittee~~ shall immediately correct the improper security and,
7 12 if not so corrected, the state fire marshal shall immediately
7 13 confiscate the stored explosives. Explosives may be
7 14 confiscated by the county sheriff or local police authority
7 15 only if a situation that is discovered during an examination
7 16 by those authorities is deemed to present an immediate danger.
7 17 If the explosives are confiscated by the county sheriff or
7 18 local police authority, they shall be delivered to the state
7 19 fire marshal. The state fire marshal shall hold confiscated
7 20 explosives for a period of thirty days under proper security
7 21 unless the period of holding is shortened pursuant to this
7 22 section.

7 23 3. If the commercial explosives licensee or permittee
7 24 corrects the improper security within the thirty-day period,
7 25 the explosives shall be returned to the licensee ~~or permittee~~
7 26 after correction and after the licensee ~~or permittee~~ has paid
7 27 to the state an amount equal to the expense incurred by the
7 28 state in storing and transporting the explosives during the
7 29 period of confiscation. The amount of expense shall be
7 30 determined by the state fire marshal.

7 31 4. If the improper security is not corrected during the
7 32 thirty-day period, the state fire marshal shall dispose of the
7 33 explosives and the commercial explosives license or permit
7 34 shall be canceled. A person whose commercial explosives
7 35 license has been canceled license or permit shall not be

8 1 ~~reissued~~ considered for reissuance of a license for a period
8 2 of two years from the date of cancellation.

8 3 Sec. 13. Section 101A.8, Code 2003, is amended to read as
8 4 follows:

8 5 101A.8 REPORT OF THEFT OR LOSS REQUIRED.

8 6 Any theft or loss of explosive materials, whether from a
8 7 storage magazine, a vehicle in which they are being
8 8 transported, or from a site on which they are being used, or
8 9 from any other location, shall immediately be reported by the
8 10 person authorized to possess such explosives to the local
8 11 police or county sheriff. The local police or county sheriff
8 12 shall immediately transmit a report of such theft or loss of
8 13 explosive materials to the state fire marshal. Any person who
8 14 violates this section commits a serious misdemeanor.

8 15 Sec. 14. Section 101A.9, Code 2003, is amended to read as
8 16 follows:

8 17 101A.9 DISPOSAL REGULATED.

8 18 No person shall abandon or otherwise dispose of any
8 19 explosives in any manner which might, as the result of such
8 20 abandonment or disposal, create any danger or threat of danger
8 21 to life or property. Any person in possession or control of
8 22 explosives shall, when the need for such explosives no longer
8 23 exists, dispose of them in accordance with rules prescribed by
8 24 the state fire marshal. Any person who violates this section
8 25 commits a serious misdemeanor.

8 26 Sec. 15. Section 101A.10, Code 2003, is amended to read as
8 27 follows:

8 28 101A.10 PERSONS AND AGENCIES EXEMPT.

8 29 This chapter shall not apply to the transportation and use
8 30 of explosive materials by the regular military or naval forces
8 31 of the United States, the duly organized militia of this
8 32 state, representatives of the state fire marshal, the Iowa
8 33 state patrol, division of criminal investigation and bureau of
8 34 identification, local police departments, sheriffs
8 35 departments, and fire departments acting in their official
9 1 capacity; nor shall this chapter apply to the transportation
9 2 and use of explosive materials by any peace officer to enforce
9 3 provisions of this chapter when the peace officer is acting
9 4 pursuant to such authority, however, other agencies of the
9 5 state or any of its political subdivisions desiring to
9 6 purchase, possess, transport, or use explosive materials for
9 7 construction or other purposes shall be required to obtain
9 8 ~~user's permits~~ the necessary license.

9 9 Sec. 16. Section 101A.12, Code 2003, is amended to read as
9 10 follows:

9 11 101A.12 DEPOSIT AND USE OF FEES.

9 12 The fees collected by the state fire marshal in issuing
9 13 licenses and performing inspections shall be ~~deposited in the~~
9 14 ~~state general fund~~ paid to the treasurer of state and
9 15 appropriated to the state fire marshal to offset the costs of
9 16 administering this chapter.

9 17 Sec. 17. Section 331.427, subsection 1, unnumbered
9 18 paragraph 1, Code 2003, is amended to read as follows:

9 19 Except as otherwise provided by state law, county revenues

9 20 from taxes and other sources for general county services shall
9 21 be credited to the general fund of the county, including
9 22 revenues received under sections 9I.11, ~~101A.3~~, 101A.7,
9 23 123.36, 123.143, 142B.6, 176A.8, 321.105, 321.152, 321G.7,
9 24 section 331.554, subsection 6, sections 341A.20, 364.3,
9 25 368.21, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 445.57,
9 26 453A.35, 458A.21, 483A.12, 533.24, 556B.1, 583.6, 602.8108,
9 27 904.908, and 906.17, and chapter 405A, and the following:
9 28 Sec. 18. Section 331.653, subsection 13, Code 2003, is
9 29 amended to read as follows:
9 30 13. Carry out duties relating to the ~~issuance of permits~~
~~9 31 for the possession, transportation, and detonation of~~
9 32 explosive materials as provided in sections ~~101A.3~~, 101A.5,
9 33 ~~101A.6, 101A.6A~~, 101A.7, and 101A.8.
9 34 Sec. 19. Sections 101.5, 101A.3, and 101A.14, Code 2003,
9 35 are repealed.

10 1 EXPLANATION

10 2 This bill concerns the state fire marshal and provides for
10 3 rulemaking requirements, the establishment of a blaster
10 4 license, and the modification of requirements concerning
10 5 commercial explosives licenses.

10 6 The bill also does the following:

10 7 Code section 101.5, which requires statewide publication of
10 8 administrative rule notices concerning rules governing
10 9 flammable liquids and liquefied petroleum gases, is repealed.

10 10 Code chapter 101A, governing explosives materials, is
10 11 amended by eliminating the process for issuing, at the local
10 12 level, a user's permit to purchase, possess, transport, store,
10 13 and detonate explosive materials. The bill instead
10 14 establishes a process for issuing a blaster license through
10 15 the state fire marshal's office.

10 16 Code section 101A.1 is amended by adding a definition of
10 17 the term "bomb", which is then included within the definition
10 18 of explosives. In addition, the definition for a commercial
10 19 license is modified by adding the storage of explosives as an
10 20 activity covered by the license, as well as changing the term
10 21 to "commercial explosives license" to distinguish it from a
10 22 blaster license.

10 23 Code section 101A.2, governing the issuance of a commercial
10 24 license, is rewritten by providing for both the issuance of a
10 25 commercial explosives license and a blaster license. The
10 26 current requirements for issuing a commercial license to a
10 27 person are made applicable to a blaster license and additional
10 28 requirements concerning a person seeking either license is
10 29 added which is similar to the requirements of Code chapter 724
10 30 for the issuance of concealed permits to carry a handgun.
10 31 Specifically, the requirements are that the person be 21 years
10 32 old, not have been convicted of a felony, not be addicted to
10 33 alcohol or drugs, not have a history of violence, not
10 34 constitute a danger to any person, and not have been convicted
10 35 of a crime under Code chapter 708 (assault). The rewritten

11 1 Code section also provides that the requirements applicable to
11 2 a person applying for a license, except the age requirement,
11 3 also apply to employees of a commercial explosives licensee.
11 4 The rewritten Code section also provides that a person
11 5 applying for a license agrees to submit fingerprints for
11 6 possible submission to the FBI. The rewritten Code section
11 7 replaces the current \$60 license fee with a fee in an amount
11 8 related to the cost of licensing as established by the state
11 9 fire marshal. The rewritten Code section also adds the
11 10 "providing" of explosives material to any unlawful person as a
11 11 violation.

11 12 Code section 101A.5, governing rulemaking authority, is
11 13 amended by deleting the requirement that the state fire
11 14 marshal distribute, without cost, administrative rules to
11 15 interested persons. The Code section is also amended to
11 16 provide that the state fire marshal establish the fees for the
11 17 issuance of licenses and for the inspection of commercial
11 18 explosive sites. In addition, the state fire marshal is
11 19 required to adopt rules providing for the education and
11 20 experience requirements necessary for issuance of a license
11 21 under Code chapter 101A.

11 22 Code section 101A.6, concerning notice of the storage of
11 23 explosive materials, is amended to provide that the local fire
11 24 chief also be informed of this storage.

11 25 New Code section 101A.6A provides for notifying local law
11 26 enforcement officials if a detonation of explosives is to
11 27 occur in their jurisdiction. The new Code section provides
11 28 that a violation of the requirements of this section is a
11 29 simple misdemeanor.

11 30 Code section 101A.7, concerning the inspection of an

11 31 explosive storage facility, is amended to permit the
11 32 assessment of a fee in an amount necessary to cover the cost
11 33 of the inspection.
11 34 The bill also provides that a violation of Code section
11 35 101A.8, concerning the reporting of a theft or loss of
12 1 explosives, and of Code section 101A.9, concerning the
12 2 disposal of explosives, is a serious misdemeanor instead of
12 3 the current simple misdemeanor. The maximum sentence for
12 4 misdemeanants is provided in Code section 903.1.
12 5 Code section 101A.12 is amended to provide that the fees
12 6 collected by the state fire marshal under this Code chapter
12 7 are to be deposited with the treasurer and appropriated to the
12 8 state fire marshal to offset the cost of administering the
12 9 chapter. Currently, all fees collected are deposited in the
12 10 general fund of the state.
12 11 Code section 101A.14, concerning penalties, is repealed,
12 12 with the penalties applicable to a violation of a particular
12 13 Code section or subsection of Code chapter 101A moved to that
12 14 particular section or subsection.
12 15 LSB 1040DP 80
12 16 ec/sh/8